IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 20298 of 2005
Date of Decision: 17.5.2007

Wazir Singh and others Vs. Commissioner, Gurgaon Division, Gurgaon and others

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Present : Mr.Sudhir Aggarwal, Advocate for the petitioners.
Mr.Anil Rathee, Addl.A.G. Haryana for respondents no.1 to 3.
Mr.P.K. Chugh, Advocate for respondent no.4.

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CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

Prayer in this petition is, for issuance of a writ in the nature of Certiorari, quashing the orders dated 30.6.2003, 23.12.2003 and 4.8.2005 passed by the Assistant Collector, Ist Grade, Gurgaon, District Collector, Gurgaon and the Commissioner, Gurgaon Division, Gurgaon. It is also prayed that a writ of Mandamus be issued, directing respondent no.3, to decide the question of title regarding the land in dispute.

Respondent no.4, filed an application for ejectment of the petitioners, under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as `the Act'), alleging that the land in dispute was the ownership of Gram Panchayat, Garoli Khurd. It

was alleged that the petitioners were using the land in dispute as a path to approach their land. The petitioners contested the petition by pleading that Gram Panchayat was not owner of the disputed land. The Assistant Collector, Ist Grade, Gurgaon, vide order dated 24.6.1996 ordered the petitioners' eviction. The petitioners preferred an appeal before the District Collector, Gurgaon, which was dismissed on 31.3.1997. A revision filed by the petitioners before the Commissioner, Gurgaon Division, Gurgaon was accepted vide order dated 5.2.1998. The matter was remanded to the Assistant Collector, Ist Grade, Gurgaon, with a direction to first decide the question of title and thereafter, adjudicate the application under Section 7 of the Act, if necessary.

As the petitioners succeeded in establishing a prima facie question of title, the Assistant Collector, Ist Grade, altered the petition filed under Section 7 of the Act, to a petition under Section 7(3) of the Act and directed the petitioners, to file an amended petition by 25.11.2001.

The petitioners,instead filed an application for review of the above order praying that as the dispute was between two private parties and Gram Panchayat is not a party, the Assistant Collector had no jurisdiction to entertain the application, filed under Section 7 of the Act. The Assistant Collector,Ist Grade, Gurgaon, vide order dated 30.6.2003, dismissed the aforementioned application and accepted the application filed under Section 7 of the Act by directing the petitioners ejectment.

Aggrieved by the aforementioned order, the petitioners filed an appeal before the District Collector, Gurgaon. Vide order dated 23.12.2003, the appeal was dismissed by holding that the land belongs to the Gram Panchayat. It was held that as the petitioners had admitted that the

Consolidation Department had committed a mistake, they should have filed the objections before the competent authority under the Consolidation Act. The petitioners, thereafter, filed a revision before the Commissioner, Gurgaon Division,Gurgaon, which was dismissed vide order dated 4.8.2005.

Counsel for the petitioners contends that though the Commissioner, Gurgaon Division, Gurgaon, vide order dated 5.2.1998 directed the Assistant Collector, Ist Grade, Grugaon, to decide the question of title first, the latter has ordered the petitioners ejectment without deciding the question of title. It is contended that after dismissing the application for review,the Assistant Collector, Ist Grade, Gurgaon, instead of calling upon the petitioners to lead evidence on the question of title allowed the application for ejectment on the same date.

Counsel for the respondents, however, states that the petitioners are responsible for the present situation. Though, the Commissioner, vide order dated 5.2.1998, directed the respondents to decide the question of title, the petitioners filed an application for review and prayed that they would impugn the proceedings before a civil Court. The Assistant Collector,Ist Grade, Gurgaon, therefore, rightly accepted the petition for ejectment. It is contended that as the orders passed by the authorities do not suffer from any error of law or jurisdiction, the present petition be dismissed.

We have heard learned counsel for the parties and perused the impugned orders.

As noticed herein above, the Commissioner, Gurgaon vide order dated 5.2.1998, remitted the matter to the Assistant Collector, Gurgaon, for adjudication on the question of title. The Assistant Collector,

vide order dated 5.11.2001 held that a question of title arose and thus, altered the petition filed under Section 7(1) of the Act, to a petition under Section 7(3) of the Act and directed the petitioners to file amended petition. The petitioners, thereafter, filed an application for review of order dated 5.11.2001, which was dismissed vide order dated 30.6.2003. The learned Assistant Collector, instead of proceeding to decide the question of title, ordered the petitioners ejectment on the same day. The petitioners prayer that they would like to approach the civil Court, did not absolve the Assistant Collector, of his duty to decide the question of title. Parties do not and cannot confer or divest a quasi judicial forum of its jurisdiction. Jurisdiction to adjudicate disputes flows from a statute and, thus, filing of an application for review did not absolve the Assistant Collector of his obligation, to decide the question of title. The Assistant Collector, without adjudicating the question of title and directing the parties to adduce evidence etc., on the question of title, directed the petitioners ejectment. The order, passed by the learned Assistant Collector, Ist Grade, Gurgaon is, thus, without jurisdiction. As a natural corollary, the orders passed by the Collector and the Commissioner, Gurgaon Division,Gurgaon dated 23.12.2003 and 4.8.2005, the appellate and revisional authority must meet the same fate as they failed to rectify this apparent defect in discharge of jurisdiction.

Consequently, the present petition is allowed. The orders dated 30.6.2003, 23.12.2003, and 4.8.2005 are set aside and the matter is remitted to the Assistant Collector, Ist Grade, Gurgaon, to decide the question of title, in terms of his order dated 5.11.2001, within a period of three months, from the date the parties appear before him.

Parties are directed to appear before the Assistant Collector, Ist Grade, Gurgaon on 15.7.2007.

(RAJIVE BHALLA)
JUDGE

17.5.2007
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(P. SATHASIVAM)
JUDGE